

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
EASTERN DIVISION

|                  |   |                               |
|------------------|---|-------------------------------|
| RALPH FULKERSON, | ) |                               |
|                  | ) | Case No. 1:04-CV-01830        |
| Petitioner,      | ) |                               |
|                  | ) |                               |
| v.               | ) | JUDGE ANN ALDRICH             |
|                  | ) |                               |
| SAMUEL TAMBI,    | ) | Magistrate Judge James Gallas |
|                  | ) |                               |
| Respondent.      | ) |                               |
|                  | ) | <u>MEMORANDUM AND ORDER</u>   |
|                  | ) |                               |
|                  | ) |                               |

Before the court is a Report and Recommendation (“R&R”) from Magistrate Judge Gallas [Docket Nos. 26] concerning Warden Samuel Tambi’s (“Tambi”) motion to dismiss Ralph Fulkerson’s (“Fulkerson”) petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254 because his claims are procedurally defaulted [Docket No. 25].

Fulkerson was convicted of one count of rape in Ohio state court in 2003 and filed this petition to challenge that conviction on several grounds in September 2004. The Ohio Court of Appeals for the Eighth District, Cuyahoga County, had denied his appeal in June 2004, but Fulkerson filed a motion for delayed appeal to the Ohio Supreme Court in February 2005. Tambi filed the pending motion to dismiss the habeas petition for failure to exhaust state remedies on April 14, 2005. The Ohio Supreme Court then denied Fulkerson’s request for a delayed appeal on April 27, 2005.

Tambi initially filed a motion to dismiss Fulkerson’s habeas petition, but the magistrate judge recommended that the court deny that motion and order Tambi to answer [Docket No. 22]. The court adopted that R&R, and Tambi filed the instant motion. Magistrate Judge Gallas now recommends that the court grant Tambi’s motion to dismiss because Fulkerson has not fairly presented his claims to the

Ohio state courts, and has not demonstrated cause or prejudice to excuse that failure to present his claims. No objection has been filed by either Fulkerson or Tambi to the R&R, and both parties were informed of the consequences of failing to file objections. Therefore, the parties have waived further review of the R&R's findings of fact and conclusions of law by the court and the right to appeal the court's order to the Sixth Circuit. *Miller v. Currie*, 50 F.3d 373, 380 (6th Cir.1995).

The court adopts the R&R [Docket No. 26] in its entirety and for the reasons stated therein grants Tambi's motion to dismiss [Docket No. 25], and dismisses the petition for habeas corpus [Docket No. 1]. The case shall be dismissed. This order is final but not appealable, as the parties have waived their right to appeal by failing to file objections. *Miller*, 50 F.3d at 380.

IT IS SO ORDERED.

/s/ Ann Aldrich  
ANN ALDRICH  
UNITED STATES DISTRICT JUDGE

**Dated: February 27, 2007**